Luzenac
Montana Operations
767 Old Yellowstone Trail
Three Forks, MT 59752

May 25, 2011

U.S. Nuclear Regulatory Commission
ATTN: Document Control Desk
Washington, D.C. 20555-0001

RE: Response to an Apparent Violation in NRC Inspection Report 99990001/2010-005; EA-11-022

This letter responds to Roy Caniano's letter of April 27, 2011 regarding the subject notice of apparent violation. As Luzenac previously communicated to Vivian Campbell, Luzenac has not requested a Pre-decisional Enforcement Conference (PEC) in light of the thorough inspection exit meeting conducted on March 24, 2011

APPARENT VIOLATION DESCRIPTION AND REASON FOR APPARENT VIOLATION:

The apparent violation involved the inadvertent transfer of a generally licensed fixed gauge containing radioactive material to a recycling center that was not authorized to receive it (Pacific Steel and Recycling, Bozeman, MT) ("PS&R"). The device was originally purchased and transferred under a general license to Cyprus Industrial Minerals in Ennis, Montana, in June 1984. The device contained a 50 millicurie sealed source of cesium-137 as of the assay date of January 11, 1984. Luzenac America, Inc. purchased Cyprus Industrial Minerals in 1992 and properly transferred three of four gauges containing Cs-137 in 1995, leaving the fourth device's whereabouts unknown until subsequently discovered at PS&R in December 2010 after an unknowing and inadvertent transfer of this device.

No over exposures to the device are known nor anticipated due to the low-level of activity of the source and the conditions of the source and source location. The NRC determined that no one at PS&R received a dose exceeding the NRC's annual limit of 0.1 rem for a member of the public and determined that radiation exposures to anyone at the Yellowstone Mine were unlikely based on Luzenac's investigation and assessment that the NRC found to be reasonable.

CORRECTIVE ACTIONSTHAT HAVE AND WILL BE TAKEN:

Upon notification by the NRC, Luzenac Montana Operations personnel began an investigation to determine the root and contributing causes of the incident. As an outcome of the investigation immediate and long term corrective actions were identified and implemented to prevent a recurrence of inadvertently transferring or disposing of licensed material again (see also NRC Inspection Report "Conclusions" at Section 5.3). Removal of the device from PS&R property and NRC authorized disposal were the immediate corrective actions taken and are outlined below.

IE14
IE72
FSME

Device Disposal:

1. A proposal to transfer ownership and dispose of the Kay Ray Device SN17573 was received and accepted from Thermo Fisher Scientific, 1410 Gillingham, Sugarland, TX 77478-2890, on December 8, 2010.
2. Kay Ray Device SN 17573 was received (Disposal RMA# 31603) by Thermo Fisher Scientific on December 22, 2010. (copy enclosed)
3. Acknowledgment of Receipt of Radioactive Material indicating the transfer of ownership of the device to Thermo Fisher Scientific was received on February 14, 2011.

Preventive/Corrective Actions:
The preventive and corrective actions identified and their current status is described as follows:

1. Conduct site survey for radioactive devices and equipment at the Luzenac, Montana Operations. (December 2010 & April 2011, complete)
2. Montana Operations site review - no sealed source devices exist. (1st review completed December 2010, periodic site review - ongoing)
3. Implement a Radiation Safety Plan to include the inventory tracking, use, storage and disposal of nuclear devices and other radiation sources. (Final version due May 31, 2011)
4. Radiation sources to be included in Environmental Aspects and Impacts List and Risk Register, ensuring that there is a responsible party for any acquired radioactive item and that such item will be tracked. (complete)
5. Employees to be trained on identification of nuclear devices and other radioactive materials. Incident communicated to Montana Operations employees during site monthly communication/mine meetings expressing expectations for safety and compliance with radioactive materials requirements – December 2010 & January 2011(complete).
6. Purchase hand held scanners (complete.) Yellowstone Mine has 2 scanners that can be shared with other sites:
    a. Radiation Alert Monitor 4, SN 44892, Calibration due August 26, 2011
    b. Radiation Alert Monitor 4EC SN 30500, Calibration due July 14, 2011
7. Implement scrap metal sampling procedure for radioactive materials prior to recycling utilizing a handheld scanner. (Final procedure due May 31, 2011)
8. Communicate incident and potential NOV. (complete)
    a. An Incident Alert was distributed to Diamonds & Minerals Product Group via email on April 1, 2011.
    b. Incident entered into SEART for distribution to all Product Groups through the Knowledge Sharing System (KSS).
9. Corporate survey of all Luzenac sites for nuclear devices and radioactive materials. (Complete, April 2011)
10. Utilize INFOR system to generate work orders for annual inventory review of radiation generating equipment (XRD, XRF & Sedigraphs) located at the mine and mills & to generate work orders for bi-annual state (Montana) registration. (complete)
11. Add radioactive sources to HSE chemical pre-approval form. (complete)

Note: the corrective actions listed above are the same as those listed in a separate "Reply to a Notice of Violation; EA-11-022" for a Severity level IV violation involving tritium-based exit signs. Luzenac considered and evaluated both incidents together to formulate comprehensive corrective actions that addressed the unrelated incidents separately and also together as a basis to raise awareness of radioactive materials requirements and compliance. As you can see, 9 of the 11 corrective actions have been completed.

According to NRC policy, one of the purposes of a civil penalty is remedial to encourage licensees to take effective and lasting corrective actions to avoid future problems by being in compliance. Luzenac believes that its immediate and long-term corrective actions, not limited to the Yellowstone Mine, have been both prompt and comprehensive, such that corrective action credit is warranted for this incident and only the lowest base civil penalty, if any is imposed at all, is appropriate under the circumstances.

REGULATORY COMPLIANCE:

The Kay Ray Device SN17573 has been received by Thermo Fisher Scientific, an authorized disposal service. Documentation of ownership transfer to them was received on February 14, 2011 in compliance with 10 CFR 31.5(c)(8)(i).

If there are any questions concerning this response, please contact me at (406)285-5307 or Jeff Errett, Yellowstone Mine Manager at (406)682-4882 extension 233.

Sincerely,

Patrick J. Downey

Pat Downey, Director Montana Operations & Technical

cc: Regional Administrator, Region IV

Hyatte, Ron (RTM)

From: Green, La'Nette [lanette.green@thermofisher.com]
Sent: Wednesday, December 22, 2010 2:36 PM
To: Hyatte, Ron (RTM)
Subject: Sources Received RMA 31603

Importance: High

Good Afternoon Ron,

Thank you for doing business with Thermo Fisher Scientific. Your Disposal RMA # 31603 has been received and will be handled in sequence with other disposal orders.

Our goal is to process the sources and issue your Transfer of Ownership documents within 28 days of receipt.

If you would like any of your shipping material returned, please contact us immediately. If we do not hear from you it will be disposed of at the same time as your sources.

Unless we are advised otherwise your Transfer of Ownership document will be sent to the "ship to" address on the purchase order. If you would prefer the documents to be sent elsewhere please provide this information to us within the next 5 days.

If, for any reason, your request requires "immediate" attention please CALL the Thermo Fisher Scientific License department at: 1-800-437-7979

Thank you,

La' Nette Green

Please send your quotes or purchase orders to the service email address below

service.ps.houston@thermofisher.com
All Purchase Orders need to be made out to Thermo Process Instruments, L.P.

How Was My Service Today? (La'Nette Green)
La' Nette Green
Service Support Specialist
Thermo Fisher Scientific
1410 Gillingham Lane
Sugar Land, Texas 77478
1-800-437-7979
713-272-2273 fax
lanette.green@thermofisher.com
www.thermoscientific.com

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ACKNOWLEDGMENT OF RECEIPT OF RADIOACTIVE MATERIAL

February 14, 2011

Ron Hyatte
Rio Tinto Minerals
28769 Sappinton Road
Three Forks, MT 59752

RMA Number 31603

Attention Ron Hyatte:

This is to certify that Thermo Fisher Scientific has received and accepted ownership of the radioactive material described below pursuant to applicable regulations and as authorized by our Texas Radioactive Material License L03524.

Manufacturer	Model	Serial	Isotope	Source	Activity	Units	Assay
KAY-RAY/SENSALL	7062B	17573	Cs-137	GF0350	50	mCi	10/1/1983
Summary (1 source)					**50**	**mCi**	

This receipt should be retained in your files as a permanent record showing the disposition of this radioactive material. If you are not the Radiation Safety Officer or responsible for maintaining regulatory records for radioactive material, please forward this letter to the appropriate person.

If you have any questions or require additional assistance, please contact us at (800) 437-7979 or (713) 272-0404.

Sincerely,
Thermo Fisher Scientific

Angelica Guidry
Nuclear Services Specialist